



Zoning & Planning Committee Report

City of Newton **In City Council**

Monday, October 23, 2017

Present: Councilors Hess-Mahan (Chair), Albright, Leary, Danberg, Kalis, Sangiolo, Baker and Yates

Also Present: Councilors Rice and Crossley

City Staff Present: Barney Heath (Director, Planning Dept.), Rachel Powers (Community Development Programs Manager), Amanda Berman (Housing Development Planner), Karyn Dean (Committee Clerk)

#104-17 Recommendation to establish a Newton Highlands Historic District
NEWTON HISTORICAL COMMISSION submitting a recommendation, pursuant to MGL Chapter 40C, Section 3, that Article III, Historical Provisions, and Division 1, Commissions and Districts, of the City of Newton Ordinances, be amended by establishing a local historic district in Newton Highlands. [04/10/17 @ 10:45AM]

Action: Zoning & Planning Voted to Accept Withdrawal without Prejudice 8-0

Note: Srdjan Nedeljkovic, President of the Newton Highlands Neighborhood Area Council, submitted a letter to the Committee requesting to withdraw, without prejudice, the petition to form a Newton Highlands Historic District. The letter was attached to the agenda. Mr. Nedeljkovic submitted another letter, on his own behalf, which Councilor Rice read for the Committee. It is attached to this report.

The Committee, therefore, voted to close the public hearing and voted unanimously to accept the petitioner's withdrawal without prejudice.

#136-17 Recommendation to establish a West Newton Historic District
NEWTON HISTORICAL COMMISSION submitting a recommendation, pursuant to MGL Chapter 40C, Section 3, that Article III, Historical Provisions, and Division 1, Commissions and Districts, of the City of Newton Ordinances, be amended by establishing a local historic district in West Newton. [04/26/17 @ 9:34 AM]

Action: Zoning & Planning Voted to Accept Withdrawal without Prejudice 8-0

Note: Members of the West Newton Hill Preservation Initiative (WNHPI) submitted a letter to the Committee requesting to withdraw, without prejudice, the petition to form a West Newton Historic District. The letter was attached to the agenda.

Laura Foote, a member of the WNHPI thanked the Committee for their work on this issue. She would like to put it back in the hands of the leadership in the City to think strategically and to keep

looking for ways to preserve the City's historic treasures perhaps through zoning reform by having some disincentives for McMansions. She also recommended that the demolition delay tool, which is valuable, but has not kept certain key resources from being demolished, be reviewed. A move to analyze how solid waste is managed and priced as demolished houses are thrown into dumpsters was suggested as well. There are tools that other cities are using that Newton should explore. She looks forward to being part of the ongoing discussion.

Ms. Foote requested that the Committee docket an item to accept enabling legislation to allow Neighborhood Conservation Districts. Councilor Sangiolo noted that there was a docket item to enable NCDs back in 2006, but there was only one discussion and then it was voted No Action Necessary in 2010. She asked the Committee to docket the item. The Chair explained that there may be a Rules change to discharge all docket items at the end of the term, so it may be better to wait for the new term.

Due to the withdrawal, the Committee voted to close the public hearing and voted unanimously to accept the petitioner's withdrawal without prejudice.

Fair Housing Compliance Interactive Workshop

The Committee hosted a workshop on Fair Housing compliance. Jennifer Goldson, from JM Goldson Community Preservation and Planning, presented the workshop. Please refer to the attached brochure for the content of the training. It may also be found at:

<http://www.newtonma.gov/civicax/filebank/documents/85673>

The presentation made by Ms. Goldson can be found at:

<http://www.newtonma.gov/civicax/filebank/documents/85674> and is also attached to this report.

Audio of this workshop can be found at:

<http://www.newtonma.gov/civicax/filebank/documents/85682/10-23-17%20ZAP.MP3>

Meeting adjourned.

Respectfully Submitted,

Ted Hess-Mahan, Chair

Srdjan S. Nedeljkovic
5 Bellingham Street
Newton Highlands, MA 02461

Zoning and Planning Committee
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

October 23, 2017

Re: Petition to form a Local Historic District in Newton Highlands

Dear members of the Zoning and Planning Committee,

Thank you for considering the proposal to form a local historic district in Newton Highlands. As you know, at this time, our LHD study group is withdrawing the proposal without prejudice.

We have learned a number of things during this process that we would like you to be aware of:

- 1) There is broad and substantial respect for the historical character of homes in the proposed district. We have come to appreciate that many residents are firmly committed to preserving and protecting this legacy. Indeed, quite a number of the most vocal opponents of the LHD have invested tremendous amounts of time, energy, and money in upgrading their own homes with a respect for history.
- 2) All together, about 30% of survey respondents expressed opposition to the LHD proposal in Newton Highlands. However, we did not feel that a broad enough level of support existed at this time to proceed without major additional outreach and more universal approval. We regret not making additional efforts to better communicate and gather broader consensus during this process.
- 3) Although the framework of a LHD appealed to some residents, the implementation of this entity seemed nebulous and concerning to others. Better definition of the requirements of a LHD were needed along with what is under its control and what is exempt. Modernization of homes and improved energy efficiency must be supported as part of any LHD implementation, and this needs to be made clear to all of those affected.
- 4) The intersect between historic preservation, design review, zoning, and new development was poorly explained and understood. The reality that historic preservation can in fact occur in the context of zoning reform and new development was not adequately conveyed. Just like in many communities elsewhere, our village will become more vibrant and modern as we preserve its history and work towards shared goals of increasing housing, revitalizing commercial vitality, and maintaining socioeconomic diversity.

We are hoping that a revived process to preserve our local history will emerge through better communication and a new collaboration between opponents and proponents of the withdrawn

LHD. The final outcome of this effort is difficult to predict. It may involve sections or certain houses within Newton Highlands being under the auspices of a Local Historic District, other parts being under a Neighborhood Conservation District, and yet others being subject to context-oriented provisions that emerge during Zoning Reform, or it may even involve certain properties being subject to some aspect of Design Review. In a new proposal, there may also be properties within a broad district that are exempt from any of these measures.

When that new historic preservation process comes to some type of fruition, we remain hopeful that you and your successors will support its implementation.

Warm regards,

Srdjan Nedeljkovic

Sincerely,

A handwritten signature in black ink that reads "Srdjan S. Nedeljkovic, M.D." The signature is written in a cursive, slightly slanted style.

Srdjan S. Nedeljkovic

Cc: Katy Holmes, Senior Preservation Planner

FAIR HOUSING COMPLIANCE: CONSIDERATIONS FOR LAND USE AND PLANNING DECISIONS TRAINING HANDOUT

2017

DEVELOPED BY THE METROWEST
HOME CONSORTIUM

Prepared by

JM Goldson community preservation + planning

J M Goldson

community preservation
+ planning

TABLE OF CONTENTS

WHAT IS FAIR HOUSING AND WHY DO WE NEED IT?	3
Timeline of Key Events	3
Legislation	5
List of Federal and State Protected Classes	5
FAIR HOUSING AND LOCAL LAND USE POLICIES AND PRACTICES	6
KEY CONCEPTS	6
ADDITIONAL INFORMATION	10
Relevant Court Cases	10
Additional Resources	12

“Many Americans who believe they attained their suburban homes by pulling themselves up by their bootstraps, in fact received significant government help along the way from federally-backed loan programs, mortgage interest deductions, subsidies for freeway construction, and other government actions.”

Massey, Douglas S., *Climbing Mount Laurel: The Struggle for Affordable Housing and Social Mobility in an American Suburb*, 2013.

JM GOLDSON

community preservation + planning

Boston, MA

www.jmgoldson.com

Jennifer M. Goldson, AICP, Founder

jennifer@jmgoldson.com

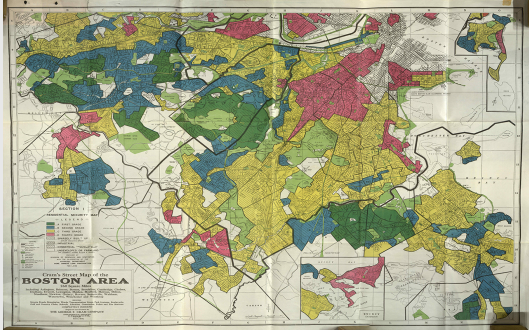
617-872-0958

TIMELINE OF KEY EVENTS LEADING TO FAIR HOUSING IN THE U.S.

MetroWest HOME Consortium and the Regional Housing Services Office
5/19/17

WHAT IS FAIR HOUSING AND WHY DO WE NEED IT?

TIMELINE OF KEY EVENTS

1910S	1920S	1930S	1940S
1917 - Supreme Court finds racially based zoning unconstitutional in Buchanan vs. Warley	Racially Restrictive Covenants (1920s - 1948) Deed restrictions prohibiting certain groups, primarily African American, from purchasing, leasing or occupying properties.		
	New Deal's Public Works Administration (PWA) (1933-1943) PWA's constructed segregated public housing developments. The program had the effect of segregating neighborhoods, many of which had not been segregated in the past.		
	New Deal's Federal Housing Administration (FHA) (1934): <ol style="list-style-type: none">1) FHA subsidized new suburban development restricted to white homebuyers - all new homes were required to include racially restrictive covenants. Whites could be imprisoned for selling to African Americans.2) Redlining (1934 - 1968) established per FHA underwriting regulations to prohibit mortgages in mostly black neighborhoods, coded in red on maps, because the federal government considered African American neighborhoods to be high risk investments.		
			
	1944 - Servicemen's Readjustment Act (GI Bill) provides home loan guaranty administered by the Veterans Administration (VA), which adopts FHA underwriting regulations (redlining) and racially restrictive covenants.		
	1948 - Supreme Court rules that the enforcement of racially restrictive covenants is unconstitutional in Shelley vs. Kraemer.		

Prepared by

J M Goldson

community preservation
+ planning

TIMELINE OF KEY EVENTS LEADING TO FAIR HOUSING IN THE U.S.

MetroWest HOME Consortium and the Regional Housing Services Office

5/16/17

1950S

1954 - Housing Act

Urban renewal policies provide incentives for redevelopment of "slums," displacing many residents in primarily low-income neighborhoods, including African Americans.

1956 - Federal Highway Act

Further enables "white flight" from urban areas and major employers to relocate largely out of reach of many urban residents due to limited public transportation options. In addition, many highways located to also achieve "urban renewal" goals that destroyed many low-income neighborhoods.

Suburban Zoning (1950s - present)

Strict limitations on multifamily housing development and preference for large lot single family houses in suburban areas limits access for low-income and minority households.



1960S

July 1967 - Detroit Race Riots

July 1967 - Kerner Commission established to investigate causes of riots. The Commission's report cited white racism, discrimination, and poverty as among the causative factors of the riots and warned that "our nation is moving toward two societies, one black, one white - separate and unequal."

April 4, 1968 - Martin Luther King Assassinated

April 11, 1968 - Fair Housing Act prohibits discrimination in housing

Prepared by

J M Goldson

community preservation
+ planning

LEGISLATION

Massachusetts Fair Housing Law – Chapter 151B – Initially passed in 1946, twenty years before the Civil Right Act, Chapter 151B provides protection against discrimination based on race, color, national origin, religion, or sex. This legislation was later amended to include age (1950), marital status (1973), disability (1983), familial status (1983), sexual orientation (1989), gender identity (2000), veteran history/military status (2004), and source of income/public assistance (2006)

www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151B

Title VI of the Civil Rights Act of 1964 – Provides protection against discrimination based on race, color, or national origin in any programs and/or activities using federal funds. www.justice.gov/crt/fcs/TitleVI-Overview

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) - Prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex or national origin.

www.portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/progdesc/title8

Section 504 of the Rehabilitation Act of 1973 – The first legislation of its kind, this Act expanded the list of protected classes for federally funded programs to include persons with disabilities.

www.dol.gov/oasam/regs/statutes/sec504.htm

Age Discrimination Act – This Act also expands the list of protected classes for any federally funded programs to include age. www.dol.gov/oasam/regs/statutes/age_act.htm

Fair Housing Act of 1988 – Amended Title VIII to add disability and familial status to the list of protected classes in the sale, rental, and financing of any dwelling. www.justice.gov/crt/fair-housing-act-2

Housing for Older Persons Act of 1995 (HOPA) - Provides exemption from the Fair Housing Act for senior housing communities based on specific criteria.

www.portal.hud.gov/hudportal/documents/huddoc?id=DOC_7770.pdf

Americans with Disabilities Act (ADA) - Expands the protections against discrimination for persons with disabilities provided in Section 504 to include any state or local services, programs or activities. www.ada.gov/ada_intro.htm

Massachusetts Zoning Law, M.G.L Chapter 40A – Spells out those situations where zoning requirements may be suspended or ignored. Commonly referred to as the “Dover Amendment” and known for its religious and educational use exemptions, this chapter also provides protection to persons with disabilities (see paragraphs 4 and 8)

LIST OF FEDERAL AND STATE PROTECTED CLASSES

I. FEDERAL PROTECTED CLASSES

(Fair Housing Act: Title VIII of the Civil Rights Act of 1968, amended 1988)

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status (*including families with children*)
- Disability

2. STATE PROTECTED CLASSES

(Mass. Antidiscrimination Law – MGL c.151B as amended)

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status (*including pregnant women and families with children*)
- Disability
- Ancestry
- Age
- Marital Status
- Source of Income (*including Section 8*)
- Sexual Orientation
- Gender Identity and Expression
- Veteran/Military Status
- Genetic Information

DEFINITION OF DISABILITY UNDER THE FAIR HOUSING ACT

As established under Section 504 of the Rehabilitation Act of 1973 and expanded by the Americans with Disabilities Act of 1990, a person with a disability is defined as any person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. Examples of impairments include, but are not limited to, the following:

- Orthopedic
- Visual
- Speech
- Hearing
- Autism
- Epilepsy
- Multiple sclerosis
- Cancer
- Heart disease
- Diabetes
- HIV infection
- Developmental disabilities
- Mental illness
- Drug addiction (*other than addiction caused by current, illegal use of controlled substance*)
- Alcoholism
- Muscular Dystroph

FAIR HOUSING AND LOCAL LAND USE POLICIES AND PRACTICES

KEY CONCEPTS

I. DISCRIMINATORY INTENT VS. DISCRIMINATORY EFFECT

Discriminatory Intent involves an action which intentionally treats a person or group of persons differently because of protected characteristics. For example, housing ads which advertise that they are an “active adult community” or are perfect for “professional couples” may appear to exclude families with children. Another example is Steering, where a person of a protected class is shown a different set of available homes or units than another person.

A **Discriminatory Effect** occurs when a facially neutral practice, actually or predictably, results in a disparate impact on a group of persons, or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color,

religion, sex, handicap, familial status, or national origin. The courts have established the following test to determine if an action has or will have a Discriminatory Effect.

The Three-Part Burden Shifting Test to Avoid Discriminatory Effect

- 1) Is the policy/practice likely to negatively impact members of a protected class?
- 2) Does the policy/practice have a necessary and manifest relationship to legitimate, nondiscriminatory interests?
- 3) Is there a less discriminatory alternative that would meet the same interests?

Local Preference Policies Could Have a Discriminatory Effect

What is Local Preference?

Local Preference is a requirement that a certain portion of available housing in a development be set aside for households with a connection to the community.

Why is requiring Local Preference a Fair Housing issue?

Two issues can be raised when communities require that a large percentage of housing in a new development be set aside for people associated with the community (local preference). First, under Fair Housing law, communities cannot insert themselves into the resident selection process or impose any conditions on the marketing selection or criteria processes. These processes can only be overseen by the subsidizing agency. Second, requests for Local Preference can be interpreted as Coded Language discriminating against minority, immigrant, or other protected classes.

When is Local Preference allowed?

Local Preference is allowed if a community can prove the following to the state's satisfaction:

- 1) That there is a demonstrated need in the community for affordable housing (such as an existing waiting list for public housing and local residents likely to apply);
- 2) That the number of local preference units can be justified. Under no circumstances can the number of local preference units in a development exceed 70% of units; and,
- 3) That the local preference will not have a disparate impact on protected classes

If approved by the state, Local Preference still has limitations. It can only apply to:

- Current Residents
- Municipal Employees
- Local Business Employees
- Families with children already attending school in the community (i.e. Metco)

2. AFFIRMATIVELY FURTHERING FAIR HOUSING

Excerpt from HUD's AFFH Fact Sheet: <https://www.huduser.gov/portal/sites/default/files/pdf/AFFH-Fact-Sheet.pdf>

From its inception, the Fair Housing Act (and subsequent laws reaffirming its principles) not only prohibited discrimination in housing related activities and transactions but also imposed a duty to affirmatively further fair housing (AFFH). The AFFH rule sets out a framework for local governments, States, and public housing agencies (PHAs) to take meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. The rule is designed to help programs participants better understand what they are required to do to meet their AFFH duties and enables them to assess fair housing issues in their communities and then to make informed policy decisions.

For purposes of the rule, affirmatively furthering fair housing "means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to

affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development.”

For purposes of the rule, meaningful actions “means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.”

What can communities do to affirmatively further fair housing?

- Adopt a fair housing policy or bylaw/ordinance
- Designate a fair housing director and create a fair housing committee/human rights commission
- Implement an outreach program to provide fair housing related education and resources to residents and municipal employees
- Implement local initiatives to increase housing opportunities of minorities
- Support regional housing needs and goals, not just local needs
- Amend zoning that restrict or impede multi-family and affordable housing, including rental housing
- Eliminate preferential treatment for local residents
- Be open to affirmatively providing opportunities for persons who are not currently residents of the community
- Promote diverse housing types including housing for families and persons with disabilities

Limited English Proficiency

Limited English Proficiency (LEP) refers to persons with a limited ability to read, write, speak and understand English. The Fair Housing Act prohibits discrimination based on LEP and further requires that all communities which receive federal funding are required to take steps to address LEP concerns.

How are communities expected to address LEP?

1. Conduct a four-factor analysis including an individualized assessment that considers the:
 - The number or proportion of LEP persons served or encountered in the eligible service population;
 - The frequency with which LEP persons encounter the program;
 - The nature and importance of the program, activity, or service provided by the program; and,
 - The resources available and the costs to the recipient.
2. Develop a Language Access Plan for the needs identified in the analysis. The Plan should include information on which forms, applications, information, etc. should be translated and when translator services may be necessary for meetings; and,
3. Provide appropriate language assistance. Examples include oral interpretive services, bilingual staff, phone line interpreter, written translation services, information on the availability of these services, and referrals to community liaisons proficient in the language or the LEP person.

3. COMMUNITY SENTIMENT & CODED LANGUAGE

Excerpt below from the “Joint Statement of the Department of Housing and Urban Development and the Department of Justice State and Local Land Use Laws and Practices and the Application of the Fair Housing Act,” November 10, 2016.

A land use or zoning practice may be intentionally discriminatory even if there is no personal bias or animus on the part of individual government officials. For example, municipal zoning practices or decisions that reflect acquiescence to community bias may be intentionally discriminatory, even if the officials themselves do not personally share such bias. (See Q&A 5.) Intentional discrimination does not require that the decision-makers were hostile toward members of a particular protected class. Decisions motivated by a purported desire to benefit a particular group can also violate the Act if they result in differential treatment because of a protected characteristic.

Can a local government consider the fears or prejudices of neighbors in deciding whether a group home can be located in a particular neighborhood?

In the same way a local government would violate the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities, a local

government violates the law if it blocks a group home or denies a reasonable accommodation request because of stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers themselves do not have biases against persons with disabilities.

Not all community opposition to requests by group homes is necessarily discriminatory. For example, when a group home seeks a reasonable accommodation to operate in an area and the area has limited on-street parking to serve existing residents, it is not a violation of the Fair Housing Act for neighbors and local government officials to raise concerns that the group home may create more demand for on-street parking than would a typical family and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the requested accommodation, if a similar dwelling that is not a group home or similarly situated use would ordinarily be denied a permit because of such parking concerns. If, however, the group home shows that the home will not create a need for more parking spaces than other dwellings or similarly-situated uses located nearby, or submits a plan to provide any needed off-street parking, then parking concerns would not support a decision to deny the home a permit.

4. REASONABLE ACCOMMODATION

Reasonable Accommodation is a change, exception, or adjustment to a rule, policy, practice or service necessary for a person with a disability to have an equal opportunity to use and enjoy the dwelling or public space. Examples of Reasonable Accommodation in zoning include modifying setbacks for ramps, providing waivers for the number of unrelated people in a home. Reasonable Accommodation can include changes to zoning, policies, practices, or services provided by the state or local government. Reasonable Accommodation also applies when a property is rented or sold to a person with disabilities. Under the Federal Fair Housing Act, not allowing a reasonable accommodation in rules, policies, practices, or services is considered to be disability discrimination if the accommodation is necessary for an individual to use and enjoy a dwelling or public space.

Must every request for Reasonable Accommodation be approved?

Not necessarily. The key to this determination is whether the request is reasonable. Reasonable requests are defined as one which does not impose an undue financial and administrative burden on the locality or fundamentally alter the essential nature of the community's zoning plan.

Keep in Mind – that before a request is denied, the community has an obligation to look for alternative alterations which could be made to meet the disabled individual's needs without the undue financial or administrative burdens. Alternative solutions which meet the community's requirements can be a win/win situation so long as the disabled individual's needs are still met.

How does someone apply for Reasonable Accommodation?

Requests can be made by or on behalf of a person or persons with disabilities. For example, a person can request to have an additional handicap accessible space added on the street adjacent to their residence, or an organization can request accommodations that allow a group home to function in a neighborhood. A request for Reasonable Accommodation can be made at any time – there are no time limits or procedural requirements for when a request must be made.

Communities must consider these applications in a clear, consistent and timely matter. For this reason, communities are strongly encouraged to have clear procedures in place for receiving and reviewing these requests. Watertown is an example of a community with a clear process in place for Reasonable Accommodation reviews. A flow chart which explains Watertown's review process and copies of their Reasonable Accommodation Application are available online at www.watertown-ma.gov/index.aspx?NID=763.

ADDITIONAL INFORMATION

RELEVANT COURT CASES

County of Westchester v. United States Dept. of Housing and Urban Development

Summary: This is a landmark desegregation case for Fair Housing. Under the False Claims Act, the County of Westchester was taken to court over allegations that for many years it had misrepresented any efforts to desegregate its largely white communities and meet the AFFH requirements of its Community Development Block Grant (CDBG) and other federal funding. The courts found that the county was guilty of making no effort to create affordable housing in its communities and the settlement required the county to build or acquire 750 units for low and moderate income housing to be in communities with 3% or less minority populations.

Mount Laurel I (1975) and II (1983) (Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel)

Summary: The decisions in Mount Laurel I and Mount Laurel II represent the first time a state Supreme Court held that zoning ordinances, which make it physically and economically impossible to provide low and moderate income housing, were unconstitutional, per the state constitution. The decisions also established requirements for the state of New Jersey and its municipalities to provide affordable housing opportunities.

Additional Resource: <http://landuselaw.wustl.edu/mtlaurel.html> – From the Washington University in St. Louis Law School, this is a very detailed legal analysis of the case. This one focuses on Laurel II but includes a summary of I as well.

Court Reporter for Mt. Laurel II – www.njlegallib.rutgers.edu/mtlaurel/docs/92nj158.pdf

Village of Arlington Heights v. Metro Housing Development Corporation (1977)

Summary: A request from the MHDC to rezone a parcel from single to multi-family to construct low and moderate income housing was denied and the MHDC filed suit, alleging that the denial of the rezoning was racially discriminatory and that it violated both the Fourteenth Amendment and the Fair Housing Act of 1968. The U.S. Supreme Court established a test to determine the presence of discriminatory intent under the Fourteenth Amendment's equal protection clause. On remand the Seventh Circuit Court of Appeals held that at least under certain circumstances, a discriminatory effect alone can establish a Fair Housing violation.

Town of Huntington v. Huntington Branch (1989)

Summary: The court found that a municipality's restrictive zoning for multi-family housing had an unjustified disparate impact on African Americans in addition to perpetuating segregation. It was on these bases that the court determined the municipality had violated the Fair Housing Act.

NAACP Boston Chapter v. HUD (1989)

Summary: The NAACP charged that HUD had violated the "affirmative duty" provision of the Fair Housing Act by disregarding conditions of race discrimination in housing, residential racial segregation and containment, and a shortage of low-income housing that could serve black households in white neighborhoods. Through a series of court decisions, a national standard of what it means to affirmatively further fair housing was established, a requirement that is applicable to HUD and HUD grantees.

Olmstead, Commissioner, Georgia Department of Human Resources, et al v. L.C. (1999)

Summary: Important case determining that persons with disabilities have the right to live in integrated communities. A woman with a mental disability, was voluntarily admitted to Georgia Regional Hospital at Atlanta (GRH), where she was treated in a psychiatric unit. Despite the professional recommendation that she could be treated in a community-based program, she remained institutionalized due to state regulations and filed suit. The court's ruling required states to eliminate unnecessary segregation of persons with disabilities and established the principle that people with disabilities should receive benefits, services, and housing in the most integrated community setting appropriate to their individual needs.

Langlois v. Abington Housing Authority (2002)

Summary: The local preference policy instituted by a group of Massachusetts housing authorities was found to have an unlawful disparate impact when four extremely low-income women of color, that were either homeless or had serious housing problems, brought suit against the Public Housing Authorities (PHAs) of Avon, Abington, Bridgewater, Halifax, Holbrook, Middleborough, Pembroke and Rockland, after experiencing barriers in their attempt to participate in the PHAs' lottery system for Section 8 Vouchers. The communities where the PHAs were located were characterized as predominantly white, with a low overall rate of poverty. The plaintiffs asserted that the housing authorities' implementation of residency preferences in the lottery system was discriminatory and the courts agreed.

Zoning Board of Appeals of Amesbury v. Housing Appeals Committee (2010)

Summary: The court established that the scope of local zoning boards to issue conditions on comprehensive 40B applications is limited to matters related to the siting and design of the development.

South Middlesex Opportunity Council (SMOC) v. the Town of Framingham: 2010

Summary: The case involved a local residential substance abuse program (SMOC) with multiple locations in the community. SMOC filed suit claiming that the community had discriminated against the population served by the agency by targeting three of its properties. One was subjected to continued evaluations of its application which resulted in a delay of the approval of permits necessary to move the project forward; a second was recommended to be closed since it no longer qualified for an exemption under the Dover Amendment; and the third was denied a request for an exemption from the Town's zoning requirements under the Dover. The court found that discrimination under the Fair Housing Act includes delays in issuing permits that are caused in part by discriminatory intent, even if the permits are ultimately granted.

Additional Resource: Judge Woodlock Court Order – decision that sent case to mediation and settlement spells out all of the legal issues in great detail.

[/www.smoc.org/pdf/judge%20woodlock%20summary%20judgement%20decision%209%209%2010.pdf](http://www.smoc.org/pdf/judge%20woodlock%20summary%20judgement%20decision%209%209%2010.pdf)

MHANY Management v. County of Nassau (2016)

Summary: The district court found a community is liable under the Fair Housing Act for intentional discrimination if it changes its zoning decisions based on community objections. The community had planned to rezone a public parcel for multifamily development but changed the zoning to mostly single family homes after residents objected.

Texas Dept. of Housing and Community Affairs v. The Inclusive Communities Project (2015)

Summary: Inclusive Communities Project, a nonprofit outfit, had successfully sued Texas for allocating federal tax credits for lower-income housing in mostly poorer, mostly minority neighborhoods in cities and suburbs around Dallas, which had the effect of keeping low-income housing out of wealthier, whiter neighborhoods. Texas then countersued, arguing that the Fair Housing Act did not prohibit implicit discrimination, only explicit discrimination. The case went to all the way to the Supreme Court, where it was used to establish that Disparate Impact is recognizable as racial discrimination under the law.

Avenue 6E Investments v. City of Yuma (2016)

Summary: A developer sued the city after it refused to rezone an area for higher density development, even though these zoning changes were common within the community. The developer charged that the refusal was based on the objections of the largely white surrounding community to a new development which was anticipated to bring in Hispanic households. In one of the first cases to find for Disparate Impact, the courts found that the plaintiffs had presented plausible claims of disparate treatment under both the Fair Housing Act and the Equal Protection Clause.

Additional Resources: Ninth Circuit Decision – This includes some of the more inflammatory letters/statements on neighborhood concerns <https://cdn.ca9.uscourts.gov/datastore/opinions/2016/03/25/13-16159.pdf>

Citylab Article on case - <https://www.citylab.com/equity/2016/04/court-decision-on-disparate-impact-and-density-in-yuma-arizona/476232/>

City of Edmonds v. Oxford House, Inc. (1995)

Summary: Oxford House (Respondent), opened a group home for 10-12 adults recovering from drug or alcohol addiction. The City of Edmonds (Petitioner), promulgated a definition of family, for purposes of single-family zoning. The definition only allowed fewer than five unrelated persons to live together, while any number of related persons could live together. The Respondent charged the city with failing to give reasonable accommodation under the Fair Housing Act (FHA). The Code governed family living and not living space per occupant as the exemption under the FHA. The purpose of a maximum occupancy is to protect health and safety by preventing overcrowding. To achieve such a purpose, it would need to apply uniformly. The provision here places absolutely no cap on the number of related persons who could cohabitate. (Source: <http://www.casebriefs.com>)

ADDITIONAL RESOURCES

- 1). Affirmatively Furthering Fair Housing Final Rule – This rule sets out the framework to be used by local and state government in meeting their AFFH duties of preventing discrimination, promoting fair housing choice, and fostering inclusive communities free of discrimination. www.hudexchange.info/programs/affh
- 2). Joint Statement of the Department of Housing and Urban Development (HUD) and the Department of Justice – State and Local Land Use Laws and Practices and the Application of the Fair Housing Act – Issued Nov. 10, 2016, this document provides clear guidance on how the Fair Housing Act applies to cases of local zoning and project review. www.justice.gov/crt/page/file/909956/download
- 3). Fair Housing Center of Greater Boston – A local nonprofit focused on eliminating housing discrimination and promoting open communities throughout the region. The organization offers community assistance programs to prevent housing discrimination and has a website with a great deal of general information. www.bostonfairhousing.org
- 4). National Housing Law Project (NHLP) - A nonprofit national housing and legal advocacy center with affirmatively furthering fair housing guidance and case law information. <http://nhlp.org/AFFH>
- 5). Johnston, Katie. “Around Boston, Racial Divides Persist” Boston Globe, April 17, 2017. www.bostonglobe.com/business/2017/04/17/around-massachusetts-racial-divides-persist/HqQrm3TcH1od1j2qQ2F44/story.html
- 6). Massey, Douglas S., Len Albright, Rebecca Casciano, Elizabeth Derickson & David N. Kinsey. *Climbing Mount Laurel: The Struggle for Affordable Housing and Social Mobility in an American Suburb*. Princeton University Press. 2013. Study of how affordable housing can be built in high opportunity areas without negative effects to the community and the benefits to adults which affordable housing in these areas provides.
- 7). WBUR Interview with James Campen, author of the Massachusetts Community and Banking Council’s Changing Patterns XXIII report which looked at mortgage lending to traditionally underserved populations. <http://www.wbur.org/radioboston/2017/05/01/racial-disparities-home-loans>
- 8). NPR Freshair’s Terry Gross interview with Richard Rothstein “A forgotten History of How the US Government Segregated America.” May 3, 2017. <http://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america>
- 9) Massey, Douglas, et al., *Climbing Mount Laurel: The Struggle for Affordable Housing and Social Mobility in an American Suburb*. 2013.

Fair Housing Compliance Considerations for Land Use and Planning Decisions

Module Developed by the
MetroWest Home Consortium and
Regional Housing Services Office

Trainer:
Jennifer M. Goldson, AICP
JM Goldson community preservation + planning

J M Goldson
community preservation
+ planning



A little bit about the presenter

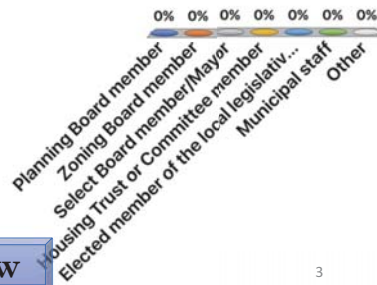
Jennifer Goldson, AICP
Founder of JM Goldson
community preservation + planning

- Community engagement
- Local & regional housing plans
- Fair Housing & Land Use Trainings
- Historic preservation + community planning
- Community Preservation Act
- Founded JM Goldson in 2006



Are you a . . .

- Planning Board member
- Zoning Board member
- Select Board member/Mayor
- Housing Trust or Committee member
- Elected member of the local legislative body
- Municipal staff
- Other

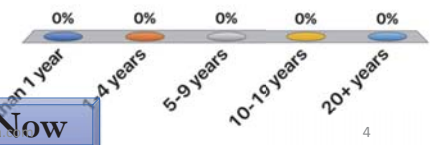


Answer Now

3

How long have you served as a municipal official/staff?

- Less than 1 year
- 1-4 years
- 5-9 years
- 10-19 years
- 20+ years

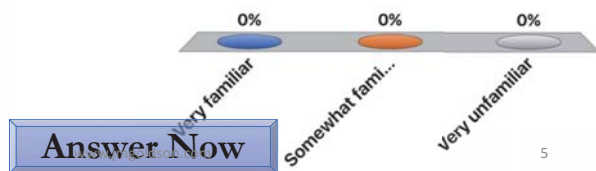


Answer Now

4

How familiar are you with fair housing requirements as related to local land use policies?

- A. Very familiar
- B. Somewhat familiar
- C. Very unfamiliar



5

Section 1: What is Fair Housing and Why do we need it?

Section 2: Fair Housing and Local Land Use Policies and Practices

Section 3: Applying Your Knowledge

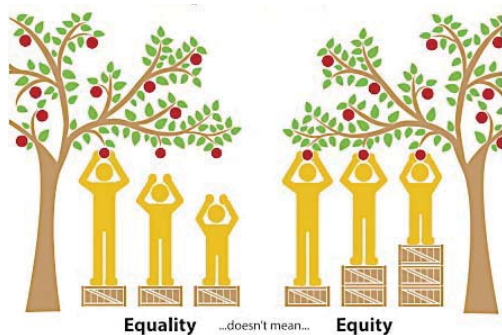
www.jmgoldson.com

6

Short History Lesson of the Fair Housing Act

Many people don't realize the extent to which federal policies and programs were explicitly designed to racially segregate metropolitan areas in the U.S.

Fair housing's goal is to promote equity by undoing the social engineering of past policies that created highly segregated communities.

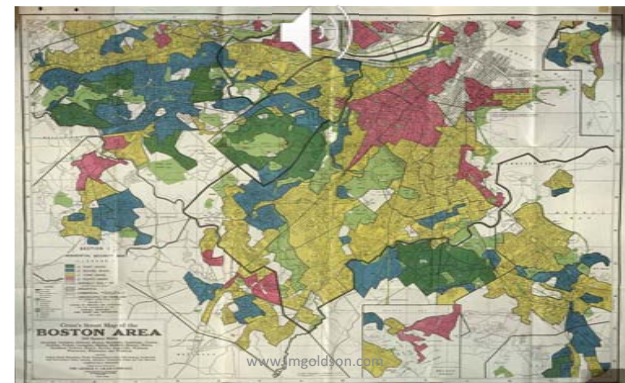


www.jmgoldson.com

7

Government Policy Explicitly Designed to Racially Segregate Metropolitan Areas

1930s	1940s
New Deal Public Works Administration 1) Segregated public housing by race Federal Housing Administration 1) Redlining – to determine where to invest federal \$ 2) Suburban investment required racial covenants	GI Bill Veterans Administration adopts FHA standards



www.jmgoldson.com

8

Government Policies Reinforce Segregation and Lead to Civil Unrest

1950s

1954 - Housing Act (Urban Renewal)
1956 Federal Highway Act
Restrictive Suburban Zoning

1960s

July 1967 - Detroit Race Riots
Kerner Commission
April 4, 1968 MLK Assassinated
April 11, 1968 Fair Housing Act

By the summer of that year, the country was on fire. Not all of it, of course—very specific pockets of it. Riots erupted in major cities: Detroit, Milwaukee, Buffalo, Cincinnati, Newark. It was the boiling over of a pot that had been simmering for the majority of the Sixties, first in the South and then rising upward and outward: a pushback against rampant police abuse and lack of affordable housing, a swelling resistance against urban renewal projects and economic inequality, and, most importantly, the rise of black militancy.

Source: Willis-Abdurraqib, Hanif, "By the end of his life, Martin Luther King realized the validity of violence," Timeline, June 15, 2017.



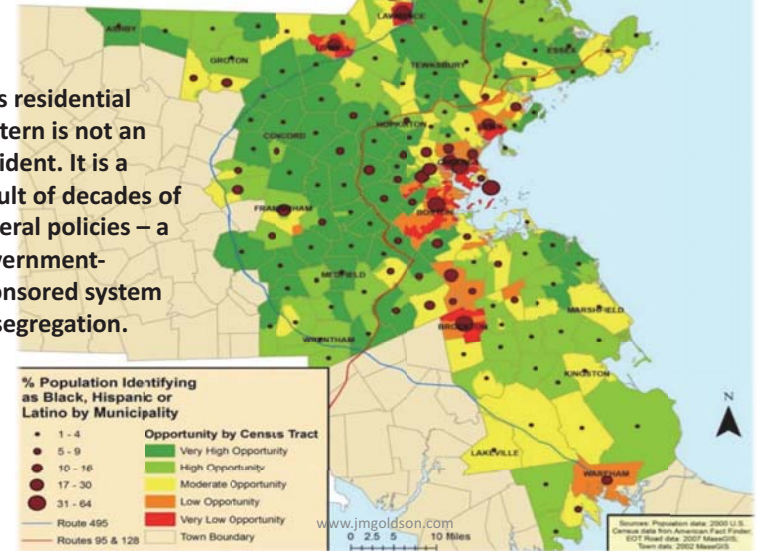
The Kerner Commission cited white racism, discrimination, and poverty as among the causative factors of the riots and warned that "our nation is moving toward two societies, one black, one white - separate and unequal."

www.jmgoldson.com

9

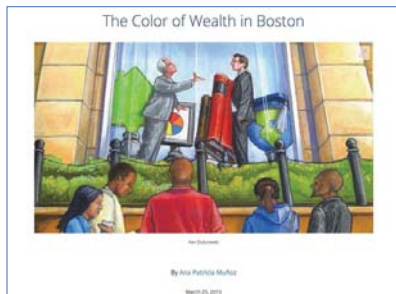
Lasting Effect of Past Policies

Percentage of Population Identifying as Black, Hispanic or Latino in Areas of Opportunity in Greater Boston



10

Racial Wealth Gap Persists



Around Massachusetts, racial divides persist



Naomi Cordova, a first-time homeowner, lives in a four-bedroom ranch-style home in Brockton with her 2-year-old son Ethan Studnic.

By Katie Johnston | GLOBE STAFF APRIL 17, 2017

Boston Fed study finds wealth disparities 'worrisome'

The Federal Reserve Bank of Boston, The Color of Wealth in Boston, 2015; www.jmgoldson.com

11

Land Use Choices Can Perpetuate Segregation



Single-family houses are an expensive housing product – one unit sitting on one parcel of land



Multi-family allocates land costs across multiple units and can make housing costs a bit more "naturally" affordable

Metro Boston Stats:

- Median monthly owner costs w/ mortgage = \$2,250
- Median monthly renter costs = \$1,236
- 93% single-family houses are owner-occupied
- 75% multi-family (2+ units) are renter-occupied
- 67% black/African American households are renters
- 74% Latino/Hispanic are renters
- 31% white (alone) households are renters

Source: 2011-2015 American Community Survey

www.jmgoldson.com

12

The Solution is Not Solely More Affordable Choices

- Cities and towns should be more welcoming and open
- Rather than seeing newcomers as detracting from “character,” suburban communities should embrace diversity
- Local leaders should speak out in favor of initiatives designed to increase diversity



We'll talk more about “Affirmatively Furthering Fair Housing”

Harris and McArdle, *More than Money: The Spatial Mismatch Between Where Homeowners of Color in Metro Boston Can Afford to Live and Where They Actually Reside*, 2004. (Harvard Civil Rights Project)

www.jmgoldson.com

13

Diversity is Key to Create Healthy, Vibrant Sustainable Communities

Fair Housing isn't just important to help undo results of past policies, but it is also good for our communities and local/regional economy.



“In diversity there is beauty and there is strength.” Maya Angelou

www.jmgoldson.com

14

Supreme Court of the United States:

“Much progress remains to be made in our Nation’s continuing struggle against racial isolation. . . The FHA must play an important part in avoiding the Kerner Commission’s grim prophecy that ‘[o]ur Nation is moving toward two societies, one black, one white - separate and un-Equal. . .’

The Court acknowledges the Fair Housing Act’s continuing role in moving the Nation toward a more integrated society.”

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, ET AL., PETITIONERS v. THE INCLUSIVE COMMUNITIES PROJECT, INC., ET AL (June 25, 2015)

www.jmgoldson.com

15

Meet the Legislation

A set of federal and state laws that protect individuals based on their membership in protected classes

- **Massachusetts Antidiscrimination Law – MGL c.151B (1946)**
 - State’s antidiscrimination law applies to employment and housing
- **The Fair Housing Act: Title VIII of the Civil Rights Act of 1968 (strengthened in 1988)**
 - Protects individuals based on membership of a protected class
 - Promotion of equal opportunity to access housing
 - Requires proactive elimination of segregation
- **Section 504 of the Rehabilitation Act of 1973**
 - Expands protected classes when federal funding is involved to include individuals with disabilities
- **American with Disabilities Act of 1990**
 - First comprehensive civil rights legislation protecting people with disabilities from discrimination, including housing

www.jmgoldson.com

16

Protected Classes – Federal and State

Federal

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status (*including families with children under the age of 18*)
- Disability

State includes all of the above and:

- Ancestry
- Age
- Marital Status
- Source of Income (*including Section 8*)
- Sexual Orientation
- Gender Identity and Expression
- Veteran/Military Status
- Genetic Information



Note: Income level is not a protected class
www.jmgoldson.com

17

Individuals with Disability



Who qualifies as a person with a disability under the Fair Housing Act?

Individuals who have, who are regarded as having, or with a record of physical or mental impairments such as:

- Orthopedic
- Visual
- Speech
- Hearing
- Cerebral palsy
- Autism
- Epilepsy
- Muscular dystrophy
- Multiple sclerosis
- Cancer
- Heart disease
- Diabetes
- HIV infection
- Developmental disabilities
- Mental illness
- Drug addiction (*other than current, illegal use of controlled substance*)
- Alcoholism

www.jmgoldson.com

18

“Direct Threat”

The Fair Housing Act does not allow for the exclusion of individuals based upon fear, speculation, or stereotype

However, the Act does not protect an individual whose tenancy would pose a “direct threat” to the health or safety of other individuals or whose tenancy would result in substantial physical damage

Unless, this threat/risk can be reduced by “reasonable accommodation”

The fact that one individual may pose a treat does not mean that another individual with the same disability may be denied housing

www.jmgoldson.com

19

Section 1: What is Fair Housing and Why do we need it?

✧ Section 2: Fair Housing and Local Land Use Policies and Practices

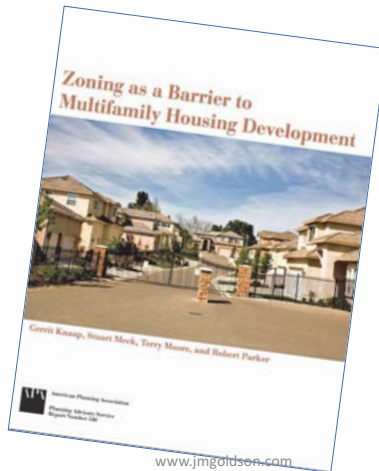
Section 3: Applying Your Knowledge

www.jmgoldson.com

20

Fair Housing and Zoning

Zoning often perpetuates segregation - especially limitations on multi-family housing, which is critical to provide genuine housing choice



www.jmgoldson.com

21

Four Key Concepts

- 1) Discriminatory Intent & Effect
- 2) Affirmatively Furthering Fair Housing
- 3) Community Sentiment & Coded Language
- 4) Reasonable Accommodation

www.jmgoldson.com

22

Four Key Concepts

- 1) Discriminatory Intent & Effect
- 2) Affirmatively Furthering Fair Housing
- 3) Community Sentiment & Coded Language
- 4) Reasonable Accommodation

www.jmgoldson.com

23

1. Discriminatory Intent & Effect

Discriminatory Intent – An action which intentionally treats a person or group of persons differently because of protected characteristics

e.g.,

- Housing ads for “active adult community” or perfect for “professional couple” may appear to exclude families with children
- Steering, or showing protected classes a different set of available homes than might show other persons

Discriminatory Effect

- A policy or practice adversely affects people of a protected class more than other people and/or perpetuates segregated housing patterns
- Can appear neutral on its face

e.g.,

- Prohibiting multifamily development in a community
- Occupancy limits for unrelated individuals
- Limit # bedrooms per unit
- Local preference

www.jmgoldson.com

24

Discriminatory Effects Standard

Three Part Burden-Shifting Test



This rule applies to all public and private entities. Always consult with your Town Counsel if you have any concerns that a project might have a discriminatory effect.

HUD, Implementation of the Fair Housing Acts Discriminatory Effects Standard, Final Rule. February 8, 2013.

25

Local Preference Policies

Local Preference Policies can also have a discriminatory effect. State Comprehensive Permit Guidelines state that before requiring Local Preference a community must:

- 1) Demonstrate the need for local preference (i.e. local public housing or subsidized rental waiting list)
- 2) Justify the extent of the local preference - At no time can local preference exceed 70% of the affordable units
- 3) Demonstrate that allowing local preference will not have a discriminatory effect on protected classes

Local Preference can apply to:

- Current Residents
- Municipal Employees
- Employees of Local Businesses
- Families with children already attending school in the community

Note: Local Preference only applies to the first tenancy.

www.jmgoldson.com

26

Four Key Concepts

- 1) Discriminatory Intent & Effect
- 2) Affirmatively Furthering Fair Housing
- 3) Community Sentiment & Coded Language
- 4) Reasonable Accommodation

www.jmgoldson.com

27

2. Affirmatively Furthering Fair Housing

Taking meaningful actions to overcome patterns of segregation and foster inclusive communities free from discrimination.

The duty to affirmatively further fair housing extends to all of a federal program participant's activities and programs relating to housing and urban development.

What can communities do to affirmatively further fair housing?

- Adopt a fair housing policy and designate a fair housing director/committee
- Implement an outreach program to provide education and resources to residents, municipal employees, realtors, etc.
- Amend zoning that restrict or impede multi-family

www.jmgoldson.com

28

Example of AFFH – Move Beyond Minimum Accessibility Requirements

At a minimum must adhere to:

- MA Architectural Accessibility regulations
- Architectural Barriers Act of 1968
- Title VIII of the Civil Rights Act of 1968
- Section 504 of the Rehabilitation Act of 1973

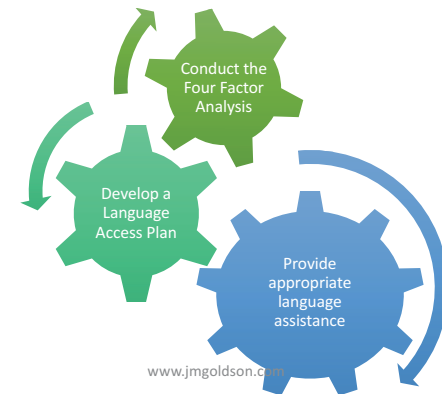
Best Practices to AFFH:

- 1) Adopt provisions to require or encourage new development include:
 - Visitability standards (e.g., Westport overlay district)
- 2) Ask applicants how they are meeting both state and federal requirements for accessibility



Example of AFFH – Language Access Plan

Federal funding recipients must develop a Language Access Plan (LAP) and to have a LAP officer to broaden access for persons of limited English proficiency (LEP). It is a way to help ensure broader participation in programs.



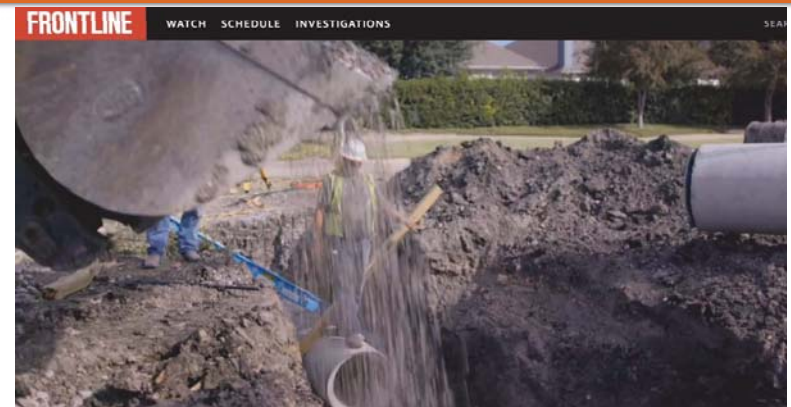
Four Key Concepts

- 1) Discriminatory Intent & Effect
- 2) Affirmatively Furthering Fair Housing
- 3) Community Sentiment & Coded Language
- 4) Reasonable Accommodation

3. Community Sentiment & Coded Language

Board decisions can be discriminatory if they reflect bias in the community.

- Community members have First Amendment right to free speech, however, a municipal board is not bound by everything that is said by community members.



3. Community Sentiment & Coded Language

Community member's objection to a proposal for permanent supportive housing for individuals with disabilities:

"I have many concerns about nine chronically homeless individuals living within such a short distance of my home. . .

How can I be assured that they will not find an unlocked doctor's office an attractive area to search for drugs?

How can I be assured that my daughter, who comes home late at night from work in our dark driveway, is safe from these individuals?"

Coded Language

Coded Language - Sometimes it is not just what is said but what lies behind the statement that can cause an issue.

For example,

- 1) Questioning impact on schools can be interpreted as not wanting children or families in the community
- 2) Restricting number of bedrooms can be interpreted as not wanting larger families, often code for minority households
- 3) Senior-only policies can be interpreted as not wanting to see children and families added to the community

Please Note: A community may have a legitimate reason for restricting the number of bedrooms or creating senior housing. The point is that these policies must be based on identified, legitimate non-discriminatory reasons to avoid fair housing liabilities.

How can a board respond to biased community sentiment?

Something like. . .

"We recognize your right to express your point of view, but these are not considerations that the board can take into account because they may violate fair housing laws."

Four Key Concepts

- 1) Discriminatory Intent & Effect
- 2) Affirmatively Furthering Fair Housing
- 3) Community Sentiment & Coded Language
- 4) Reasonable Accommodation

4. Reasonable Accommodation

An exception or change to rules, policies, or regulations to allow accommodations to allow a person with disabilities equal opportunity to use and enjoy a building.

Such as:

- Allowing ramps in the front yard setback
- Allowing parking in front or side yard setback
- Exceed the maximum occupancy standards imposed through zoning for unrelated individuals (particularly to allow group homes)



In addition to federal Fair Housing Act, the Mass. Antidiscrimination Law c.151B (s. 7A) requires reasonable accommodation, as does MGL c.40A.

Reasonable Accommodations and M.G.L. c.40A

Per the MA Zoning Act cannot discriminate a disabled person:

- a) Occupancy standards for group homes that are more restrictive than that imposed on families (state sanitary code)
- b) Ramps for handicap access

Massachusetts Zoning Law, General and Community Residences

M.G.L. c. 40A § 31A

Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination.

ZONING

Massachusetts Zoning Law, Access Ramps

M.G.L. c. 40A § 31B

No dimensional lot requirement of a zoning ordinance or by-law, including but not limited to, set back, front yard, side yard, rear yard and open space shall apply to handicapped access ramps on private property used solely for the purpose of facilitating ingress or egress of a physically handicapped person. Although not required to meet the AAB Standards, the standards can be used as good design recommendations.

Reasonable Accommodations Process

Many communities fall down on PROCESS for reasonable accommodation:

1) Process needs to be flexible

1) Process needs to maintain confidentiality

- e.g., Don't ask the nature of a disability in a public meeting

Required Reading

- Read the HUD/DOJ Joint Statement
- Set up as Q&A with 27 questions including:
 - How does the Fair Housing Act apply to state and local land use and zoning?
 - What types of land use and zoning laws or practices violate the Fair Housing Act?
 - When does a land use or zoning practice constitute intentional discrimination in violation of the Fair Housing Act?
 - Can state and local land use and zoning laws or practices violate the Fair Housing Act if the state or locality did not intend to discriminate against persons on a prohibited basis?
- It includes an extensive section on Group Homes
- The following examples are taken from the Joint Statement

Section 1: What is Fair Housing and Why do we need it?

Section 2: Fair Housing and Local Land Use Policies and Practices

✧ Section 3: Applying Your Knowledge

Case Study #1

- In 1970, population was about 64,000, mostly white with 27 black residents
- Community zoned mostly single-family but allowed multi-family in transition zones
- Religious institution wanted to build affordable housing on its land – sought a local developer to build 190 units on 15-acres
- Some residents raised concerns about decreased property values and the proposed new residents
- Village Plan Commission votes against proposal finding the site was not appropriate citing the assumptions of neighbors

Case Study #1 - Fair Housing Considerations

1. What federal protected classes may be affected in this situation?

- Race/color

2. What key concepts may be relevant to this situation?

- Discriminatory Intent
- Discriminatory Effect
- Community Sentiment

Village of Arlington Heights v. Metro Housing Development Corporation

- Village denies request by Metro Housing Development Corporation (MHDC) to rezone a parcel from single to multi-family for a low/moderate-income development.
- MHDC files suit alleging that the denial of the rezoning was racially discriminatory and that it violated the Equal Protection Clause of the 14th Amendment and the Fair Housing Act.
- The US Supreme Court weighed in on the case and found no evidence of discriminatory intent under Equal Protection Clause. It remanded the case back to the Seventh Circuit Court of Appeals.
- In 1977, the Seventh Circuit reconsidered case under the Fair Housing Act and established that there are two types of discriminatory effect: 1) disparate impact and 2) perpetuation of segregation.
- The case establishes precedent that a discriminatory effect alone can establish a Fair Housing violation.

Case Study #2 – Zoning Amendment for Greater Density

- Developer Y requests a zoning amendment to reduce required lot size.
- The developers plan to build “moderately-priced” housing on the border of predominantly white community. Developer Y’s is known for developing Hispanic neighborhoods.
- Neighbors expressed concerns that developer “catered” to low-income families and that people in their developments tend to have large households, lack pride of ownership, and fail to maintain their properties, resulting in increased crime.
- Quote from a neighbor: “We find it very disappointing that we have worked very hard to keep our children out of areas like this, as well as worked very hard to buy the home that we live in.”
- The lot size reduction was a fairly standard request in this community which regularly granted these changes. Zoning Board voted to recommend the rezoning to the local legislative body, despite community sentiment.
- However, the local legislative body denied the zoning amendment.
- This was the first zoning amendment rejection in three years and in more than 76 requests.

Case Study #2 – Fair Housing Considerations

1. What protected classes may be affected in this situation?
2. What key concepts may be relevant to this situation?
3. How well do you think this town handled the situation?
4. Have you experienced or witnessed any similar situation in your town? What was the outcome?

Case Study #2 – Here’s what actually happened

Avenue 6E Investments, LLC v. City of Yuma: 2016

- Developers filed suit for discriminatory intent under Equal Protection Clause of the 14th Amendment, as well as for discriminatory effect under the Fair Housing Act.
- Outcome: The Ninth Circuit Court of Appeals ruled in favor of the developer finding discriminatory intent.
 - The Court concluded that there was sufficient evidence that the City had rejected the developer’s application for reasons of barely disguised animus toward the expected residents of the new development.
 - There appeared to be no principled opposition to the requested zoning amendment.
 - The record was replete with “racially-tinged code words” and for the Hispanic influx that the neighbors anticipated.

“None of the alleged statements expressly refers to race or national origin; rather, they raise various concerns about issues including large families, unattended children, parking, and crime. We have held, however, that the use of “code words” may demonstrate discriminatory intent.” Ninth Circuit

Case Study #3 – Local Preference in Affordable Housing

- In a primarily white, middle class suburban community with no public transportation, the Housing Authority is planning to update its wait list for public housing and Section 8 vouchers.
- It develops an application process that requires pick up of applications during a 2-day window and to return them by Friday the following week. No online applications are made available.
- Submitted applications will be placed in a lottery with local preference.
- A group of extremely low-income minority households from neighboring communities are interested in applying for the wait list. However, they do not have cars and have a difficult time meeting the application pick up and drop off requirements.
- Once submitted, their applications go to the bottom of the wait list because they lack a current connection to the community.
- These applicants join together to file suit against the Housing Authority, charging that the application process is discriminatory.

Case Study #3 – Fair Housing Considerations

1. What protected classes may be affected in this situation?
2. What key concepts may be relevant to this situation?
3. Dig deeper – think like a sociologist . . . What underlying goals could lie behind a desire for local preference?
4. What would be a legitimate and substantial goal for local preference?
5. Do you think local preference policies could have discriminatory effect in your community? Why or why not?

Case Study #3 – Here's What Actually Happened

Langlois v. Abington Housing Authority (2002)

- A group of extremely low-income women of color and the Coalition for the Homeless brought suit against the Housing Authorities of Avon, Abington, Bridgewater, Halifax, Holbrook, Middleborough, Pembroke and Rockland, after experiencing barriers in their attempt to participate in the lottery system.
- The communities where the Housing Authorities were located were characterized as predominantly white, with a low overall rate of poverty.
- The plaintiffs asserted that the Housing Authorities' implementation of residency preferences in the lottery system was discriminatory.
- U.S. District Court for MA found that residency preferences of 6 Housing Authorities had a discriminatory effect on racial minorities.
- Did not find that the application procedures had a discriminatory effect, but that it was a violation of the Housing Authorities' duty to affirmatively further fair housing.

Case Study #4 – Group Home

- Recovery House operates a group home for 10-12 individuals recovering from alcoholism and drug addiction in a neighborhood zoned for single-family residence.
- Town of Z issued citations to Recovery House charging violation of the town's zoning bylaw.
- The zoning bylaw requires that the occupants of single-family dwelling units must compose a "family."
- Bylaw defines family as "persons [without regard to number] related by genetics, adoption, or marriage, or a group of five or fewer [unrelated] persons."

Case Study #4 – Fair Housing Considerations

1. What protected classes may be affected in this situation?
2. What key concepts may be relevant to this situation?
3. What would be a legitimate goal for occupancy standards?

Case Study #4 – Here's What Actually Happened

City of Edmonds v. Oxford House, Inc. (1995)

- Discrimination covered by the FHA includes “a refusal to make reasonable accommodations . . . to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling.”
- Oxford House asked the City to make a reasonable accommodation by allowing it to remain in the single-family dwelling.
- Oxford House explained that the group home needed 8-12 residents to be financially and therapeutically viable.
- The City sued Oxford House seeking a declaration that the FHA does not constrain the City's zoning code family definition rule.
- U.S. Supreme Court held that despite FHA's allowance for reasonable restrictions regarding maximum number of occupants, the FHA does not exempt prescriptions of the family-defining kind (e.g., provisions to foster the family character of a neighborhood).
- Justice Ginsburg reasoned that the provision was a family composition rule and not a maximum occupancy restriction.
- Court ruled in favor of Oxford House.

www.jmgoldson.com

53

1. U.S. federal government's NEW DEAL programs/policies were explicitly designed to racially segregate metropolitan areas?

- A. True
- B. False

Quiz

Were you paying attention?

